IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

CRIMINAL APPEAL NO. 117 OF 2004

Rajkishore Mahendraprasad Mahanto]
Convict No. C/2134, At present
undergoing imprisonment at Kolhapur
Central Prison, Kalamba,
District Kolhapur ..Appellant
V/s
The State of Maharashtra ..Respondent.

Mrs. Ruchita R. Dhuru, Appointed Advocate for the appellant.

Mrs. V.R. Bhosale, A.P.P for the State.

CORAM : J.H. BHATIA, J.

DATE : 17TH JANUARY, 2007.

ORAL JUDGMENT

. The appellant had filed this appeal through jail, challenging the Judgment and order by which he was convicted for the offences punishable under Sections 392 and 397 r/w Section 34 of Indian Penal Code and was sentenced to undergo R.I. for 5 years with fine of Rs. 500/- and R.I. for 7 years respectively.

2. The prosecution case, in brief, is that the complainant Sunil M. Pathare (PW1) was a salesman at

Nasim Creations at Colaba. His friend Santosh Surajsingh was hawker and use to sell Cold-drinks at the footpath opposite Kamla Nehru Park, Malbar Hill of Bombay City. On 10/5/2000, in the afternoon P.W.1 Sunil had been to Kamla Nehru Park to meet his friend. At about 7.00 p.m. Sunil and his friend Santosh left the place to go to Grant Road Railway Station. While they were proceeding by Ridge Road, near the main get of Parsi Tower of Silence, suddenly four persons, including the appellant, came from behind. One of them caught collar of Sunil, another caught his pant and third caught his hand. Fourth person caught Santosh. Those persons robbed Sunil by snatching a gold chain of 6 grams from his neck and amount of Rs. 1500/- from his purse and wrist watch. Santosh was also robbed of a gold chain and amount of Rs.300/-. Having robbed of them, the culprits tried to run away but PW 1 Sunil and his friend chased them. Some members of public also chased the culprits. Constable Nana Pawar, PW 2 was on patroling duty near Ratan Tata Institution (R.T.I.) Junction. He also saw the culprits running away from Kemps Corner side and being chased by two persons, who were shouting "Chor, Chor". In view of this, Constable Nana Pawar also intervened and he succeeded in nabbing

the present appellant, while other three accused succeeded in escaping. As the present appellant was holding a knife, he was disarmed and was taken to Police Station, Gamdevi. At the police station, personal search of the appellant was taken and a broken gold chain was recovered from him. It was the chain which was snatched from the neck of P.W.1 Sunil. Constable Nana Pawar produced the knife, which he had taken away from the accused near RTI Junction. Both these articles were seized under panchanama by API, Alka Mane (PW.4). As the offence was committed within the local limits of Malbar Hill Police Station, initially the FIR was registered as Crime No. 0/2000 at Gamdevi Police station and the matter was transferred to Malbar Hill Police Station, where the offence was re-registered as Crime No.66/2000 under Sections 392,397 r/w section 34 of IPC against the present appellant and his absconding companions.After investigation, charge-sheet was filed and finally the case was put up for trial before the Sessions Court.

3. Accused pleaded not guilty to both the charges. On behalf of prosecution 5 witnesses were examined and some documents were also placed on record. Being

satisfied with the prosecution story, the learned Sessions Judge convicted and sentenced the present appellant, as stated above.

4. The appellant was in jail from the date of incident itself and continued to be in jail. He preferred this appeal by making an application through jail and this Court had appointed Mrs. Ruchita Dhuru, Advocate on behalf of the appellant. At the out set, it may be stated that the appellant had undergone complete sentence and was released from jail on 16/5/2006. It is unfortunate part that the appeal could not be heard and disposed of before completion of his sentence.

5. Heard Mrs. Ruchita Dhuru, learned Advocate for the appellant and Mrs. Bhosale, learned APP for the State. Perused the record and proceeding of the trial Court. Out of the 5 witnesses examined by the prosecution, P.W.1 Sunil is the only witness about the actual incident. His friend/companion Santosh was not examined by the prosecution. Prosecution relies heavily on the evidence of P.W.1 Santosh and other witnesses, who provided circumstantial evidence. According to the prosecution, evidence of Sunil is fully corroborated by

the evidence of P.W.2 constable Nana Pawar, P.W.3 Laxmikant Mhatre Panch witness and P.W.4 API Alka Mane.

6. P.W.1 Sunil deposed the prosecution story, as stated above, in detail in his deposition. According to him, he and his companion Santosh chased the culprits after the incident for quite long distance and when they reached near RTI Junction, the police constable Nana Pawar, who was on duty, hearing shouts joined them and chased the culprits and finally one of them, who is the present appellant, was nabbed with a knife near Bhartiya Vidya Bhavan. He was having gold chain, which was snatched by him from the neck of PW.1 Sunil. PW 2 Constable Nana Pawar supported this fact in his evidence. As per the evidence of these two witnesses, after the accused appellant was nabbed near Bharti Vidya Bhavan, he was taken to Gamdevi Police station, being the nearest Police Station and he was produced there before API, Alka Mane, who was on duty as Station House Officer. She called two panch witnesses. One of them was PW 3 Laxmikant Mhatre. As per the evidence of P.W. 4, Alka Mane, after arrival of the panch witnesses, personal search of the accused/appellant was taken and a broken gold chain was recovered from his pocket. It was

seized under panchanama in presence of panch witnesses. At that time, PW 2 Nana Pawar produced a knife, which he had taken over from the accused to disarm him near Bharti Vidya Bhavan. That knife was also seized under the same panchanama. P.W.3 Laxmikant Mhatre has corroborated this prosecution story.

7. It may be noted that there is some discrepancy in the evidence of PW 1 Sunil on the one hand and remaining three witnesses on the other about seizure of gold chain. Sunil deposed that the accused was nabbed with knife near Bharti Vidya Bhavan. He was also found in possession of the gold chain. Police Constable took personal search of accused and took possession of knife and gold chain. Thus, according to him, near Bharti Vidya Bhavan itself the knife and the gold chain, both were taken over by the police constable from the appellant. However, constable Nana Pawar maintained that only to disarm the accused he had taken the knife from the hands of the accused but he had not taken the gold chain from him. The chain was found during his personal search at the police station. As stated above, panch witness P.W.3 Laxmikant and API, Mane P.W.4 also deposed on oath that the knife was produced by the

constable while the chain was found from the pocket of the accused during his search at the police station. It is material to note that in the seizure panchanama Exh.15 the facts are mentioned as deposed by PW 2 constable Nana Pawar, P.W.3 Laxmikant, and P.W. 4 Alka Mane. Taking into consideration the evidence of three witnesses, which is consistent not only interse but also with the contents of the panchanama, I find that their evidence may be accepted as true. Possibility cannot be ruled that P.W.1 Sunil might have been confused about the seizure of articles partly at Bharti Vidya Bhavan and partly at police station.

8. If the prosecution evidence as stated above is believed, it is clear that the offence of robbery was committed and at the time of commission of robbery the accused appellant was armed with the knife and he also used the knife for that purpose. As such, the offences under section 392 and 397 of IPC were committed. However, before concluding, it would be appropriate to consider the plea taken on behalf of the accused during the cross-examination of P.W. 1 Sunil. In the cross-examination, it was suggested by the learned Counsel on behalf of the accused, that the accused had

some quarrel on the point of payment of the price of soft drink near Kamala Neharu Park. Due to this, Santosh and some other vendors assaulted the accused at Kamala Neharu Park. Due to this, the accused tried to run away and when he was running, Sunil, Santosh and others chased him and finally he was caught near RTI Junction and a false story of robbery was cooked up. It was suggested that no robbery had taken place. All these suggestions were turned down by PW Sunil. It is material to note that in his statement under Section 313 of Cr.P.C., the accused did not state anything about the above story, which was put to P.W. 1 Sunil in paragraph 9 of the cross-examination. In question No. 21 under Section 313 of Cr.P.C. he was asked as to why the prosecution witnesses had deposed against him and he replied "I cannot say". In question No. 21 he was asked whether he wished to say anything else. To this also he replied "I have nothing to say". Thus, accused himself did not state anything about the alleged quarrel between Santosh and the present appellant on the point of payment of the price of cold drink.

9. It may be noted that in the evidence on record distances between different spots were not shown. With

the help of learned Counsel, I tried to find out the distance of the different places, which are referred in the evidence in this case. Admittedly, RTI Junction is about one and half k.m. from Kamala Nehru Park, where the hawkers sell their goods. Bharti Vidya Bhavan is at a short distance from RTI Junction, Parsi Tower of Silence is between Kamla Nehru Park and RTI Junction, at about 1 k.m. from Kamla Nehru Park. If some quarrel had taken place between Santosh and the accused on the point of payment of the price of cold-drink and if Santosh and other vendors had already beaten him and he had run away, it is impossible to believe that Santosh would leave his goods at Kamla Neharu Park and chase the customer and that too for a distance of more than one and half k.m.. He could chase him for about 50 to 100 meters, if really some quarrel had taken place but it is the most unnatural and improbable that a hawker would leave his goods at the open place and run after a customer for more than one and half k.m. particularly, when he had already punished him substantially. In view of these circumstances, the defence story, which was taken up during the cross-examination of P.W. 1 Sunil appears to be improbable and unbelievable.

10. I view of the evidence on record and the circumstances, I find that prosecution has proved that the accused had committed the offence of robbery punishable under section 392 and at the time of commission of the robbery, the accused was armed with deadly weapon i.e. knife and it was used for putting the same on the neck of the victim, for the purpose of committing the offence of robbery. Therefore, the offence punishable under Section 397 IPC is also proved. Offence of robbery punishable under section 392 IPC carries R.I. for a term which may extend to 10 years and if the accused used the deadly weapons at the time of committing robbery under section 397, he shall be punished for a sentence which would not be less than 7 years. Thus, it is clear that the learned trial Court awarded minimum sentence of imprisonment as prescribed in law. It is difficult to find any fault.

11. In view of the above circumstances, there is no merit in the appeal and it is liable to be dismissed.

12. For the aforesaid reasons, the appeal stands dismissed.

(J.H. BHATIA, J.)